

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SELWYN DAYS,

Plaintiff,

-against-

18-CV-11538 (NSR-AEK)

**THE EASTCHESTER POLICE
DEPARTMENT, THE TOWN OF
EASTCHESTER, THE COUNTY OF
WESTCHESTER, MARIO ASTARITA,
GEORGE BARLETTA, MATTHEW
KIERNAN, AND CHRISTOPHER
CALABRESE,**

Defendants.

STIPULATION

WHEREAS, Plaintiff Selwyn Days (“Plaintiff”), and Defendants The Town of Eastchester, Mario Astarita, George Barletta, and Matthew Kiernan (“the Eastchester Defendants”) have reached a settlement which requires dismissal with prejudice of all Plaintiff’s claims against the Eastchester Defendants, as well as dismissal with prejudice of all causes of action, claims, allegations and theories of recovery except for those predicated upon intentional wrongs or reckless conduct asserted against the County of Westchester and/or Christopher Calabrese (the “Westchester Defendants”), including specifically the Eighth Cause of Action alleging negligent hiring, training supervision, retention, and discipline; and

WHEREAS, the Westchester Defendants have sought leave to file a third-party complaint against The Town of Eastchester in order to assert, *inter alia*, claims for defense, indemnification, and breach of contract; and

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DATE FILED: 2/11/2022

WHEREAS, all Parties wish to have any remaining claims in this case resolved as expeditiously as possible; and

WHEREAS, Plaintiff has agreed that, to the extent that Westchester County is found to have any valid claims for defense and/or indemnification against the Town of Eastchester with respect to any of the remaining claims asserted by Plaintiff in the underlying lawsuit, Plaintiff will voluntarily dismiss these claims with prejudice; and

WHEREAS, the Westchester Defendants agree that, if Plaintiff voluntarily dismisses its remaining claims against the Westchester Defendants in this lawsuit with prejudice, the Westchester Defendants will likewise voluntarily dismiss their remaining third-party claims against the Town of Eastchester with prejudice; and

IT IS HEREBY STIPULATED AND AGREED by and between the parties and/or their respective counsel(s) that all claims brought by Plaintiff in the above-captioned action are dismissed, with prejudice, against defendants The Eastchester Police Department, The Town of Eastchester, Mario Astarita, George Barletta, and Matthew Kiernan, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii); and

IT IS HEREBY FURTHER STIPULATED AND AGREED by and between the parties and/or their respective counsel(s) that all causes of action, claims, allegations and theories of recovery except for those predicated upon intentional wrongs or reckless conduct brought by Plaintiff against the Westchester Defendants, including specifically the Eighth Cause of Action alleging negligent hiring, training supervision, retention, and discipline, are dismissed, with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii); and

IT IS HEREBY FURTHER STIPULATED AND AGREED that by February 15, 2022, the Westchester Defendants shall serve and file a third-party complaint against the Town of Eastchester, pursuant to Federal Rule of Civil Procedure 14(a); and

IT IS HEREBY FURTHER STIPULATED AND AGREED that counsel for The Town of Eastchester, Cerussi & Spring, will accept service of this third-party complaint, via e-mail, on behalf of the Town of Eastchester, which hereby waives formal service of the summons and third-party complaint; and

IT IS HEREBY FURTHER STIPULATED AND AGREED that by March 1, 2022, the Westchester Defendants shall file their motion for a declaratory judgment on the contractual defense claim; by April 1, 2022, Eastchester/Plaintiff shall file their joint opposition to this declaratory judgment motion, or a third-party answer by Eastchester, and their joint cross-motion to dismiss all or part of the third-party complaint (filed as a single brief); by April 15, 2022, the Westchester Defendants shall file their reply in further support of the declaratory judgment motion and in opposition to the cross-motion to dismiss (filed as a single brief); and by April 29, 2022, Eastchester/Plaintiff shall file their joint reply in further support of the motion to dismiss.

[Signatures on Following Page]

SIGNED:



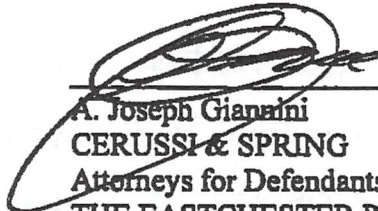
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SO ORDERED:



Nelson S. Román, U.S.D.J.

Dated: White Plains, NY
Feb. 11, 2022